

ORIGINAL

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
in and for the STATE OF UTAH

IN THE MATTER OF THE)
APPROVAL OF NOTICE OF)
INTENT AND RECLAMATION))
PLAN SUBMITTED BY)
CO-OP MINING COMPANY.)

CAUSE NO. ACT/015/025

BE IT REMEMBERED that on the 18th day
of June, 1980, a hearing was held before the Board
of Oil, Gas and Mining in the above-entitled matter
and said hearing was taken before Athena Moore, a
Certified Shorthand Reporter and Notary Public in
and for the State of Utah, holding Utah C.S.R. License
No. 88, commencing at the hour of 10:20 a.m. in
the Wildlife Resources Auditorium, 1596 West North
Temple, Salt Lake City, Utah.

A P P E A R A N C E S

Charles Henderson, Chairman
Board of Oil, Gas & Mining

Thadis W. Box, Board Member
E. Steele McIntyre, Board Member

Cleon B. Feight, Hearing Officer
Director, Division of Oil, Gas & Mining

Jim Smith
Reclamation Soil Specialist

Ron Daniels, Coordinator
Mined Land REclamation

Ed Guynn, USGS

Carl Kingston
Attorney at Law

Paula Frank
Secretary to the Board

Scott N. Johansen
Johansen & Thorpe
Attorneys at Law
Castle Dale, Utah 84513

Mary Ann Wright
Reclamation Biologist

Tom Suchowski
Reclamation Hydrologist

Denise Dragoo
Special Assistant
Attorney General's Office

Mike Minder
Chief Petroleum Engineer

I N D E X

Witness

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Examination by Mr. Kingston

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BRUCE KALISER

Examination by Mr. Feight
Examination by Mr. Johansen
Examination by Mr. Kingston

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P R O C E E D I N G S

MR. CHAIRMAN: This is the time and place to hear Cause No. ACT/015/025 in the matter of the approval of the Notice of Intent and Reclamation Plan submitted by Co-op Mining Company. Jack, will you read the call into the record?

HEARING OFFICER: This is in the matter of the approval of the Notice of Intent and Reclamation Plan submitted by Co-op Mining Company. It was issued as an Order To Show Cause and Notice of Hearing, Cause No. ACT/015/025.

The file indicates that notice was given as required by law, and I believe we have received a formal objection from Emery County, a body politic and corporate of the State of Utah.

MR. CHAIRMAN: There are two objections.

MS. DRAGOO: Also Huntington City.

HEARING OFFICER: And also Huntington City. I think they are here.

MR. CHAIRMAN: Will the Co-op people please come up. In advance of beginning of your presentation, we would like Denise Dragoo to make a preliminary statement with regard to our jurisdiction.

MS. DRAGOO: Mr. Chairman, with respect

1 to the matter of the objection of Emery County, I
2 believe that Emery County is objecting to the Notice
3 of Intent to Mine due to a certain zoning ordinance
4 which is applied to the mine that is before the
5 Board today, the Co-op Mining Company.

6 Actually, I don't think this is a matter
7 that is within the cognizance of the Board of Oil,
8 Gas and Mining in terms of the Notice of Intent
9 to Mine. However, if Emery County decides to zone
10 that mine or if they have building permits and
11 additional regulatory requirements, I think that's
12 fine with me. I don't think that is within the
13 cognizance of what the Board deals with.

14 Generally our jurisdiction is confined
15 to mining matters, and I think if Emery County as
16 a separate body politic wants to bring an action
17 in court against the Co-op Mining Company for
18 infringing upon their zoning ordinance, I think
19 that might be more appropriate. However, I don't
20 think that is a ground upon which the Board of
21 Oil, Gas and Mining can deny a permit to mine.
22 That is my opinion with respect to the Emery
23 County complaint.

24 With respect to the Huntington City
25 complaint, this again involves a matter between

1 essentially two private parties concerning the water
2 rights of Huntington City. While the Board I think
3 should hear this out and hear the complaints of
4 Huntington City, I don't believe that it has the
5 jurisdiction actually to force the parties to do too
6 much in this situation. That is true especially in
7 light of the decision by Judge Flannery of the
8 District Court of the District of Columbia. This
9 decision came out in May of this year, and basically
10 has construed the provision of the law that we
11 were working under. The provision has to do with
12 replacement of water rights, and on Page 37 of
13 that opinion, the Judge ruled that water replacement
14 applies only to surface coal mining operations and
15 there is simply no statutory basis to apply that
16 provision to underground mines. That was the
17 jurisdictional basis really that I think Huntington
18 City hung its hat on in coming before the Board.
19 Without that jurisdictional authority to require
20 replacement of water rights, I think while the
21 Board can hear them out, I don't think the Board
22 can affirmatively require replacement of those water
23 rights. That's my opinion. I would be glad to
24 provide you with a copy of this opinion. It just
25 came to my attention.

1 MR. CHAIRMAN: Thank you, Denise. Now
2 before we start, let's find out who is here
3 representing Co-op Mining Company.

4 MR. KINGSTON: My name is Carl Kingston,
5 attorney for Co-op Mining Company. Also present
6 are Wendell Owen and Eldon Kingston, partners of
7 Co-op Mining Company.

8 MR. CHAIRMAN: What is his last name
9 of the other gentleman?

10 MR. KINGSTON: Eldon Kingston.

11 MR. CHAIRMAN: Now who is here objecting?

12 MR. JOHANSEN: My name is Scott Johansen.
13 I'm the Emery County Attorney and Huntington City
14 Attorney. I also appear on behalf of the Castle
15 Valley Special Service District. Matt Gunderson
16 is their counsel, but he felt we could save time
17 if I handle all three matters today.

18 Castle Valley has signed the Huntington
19 City protest, and their claims are essentially
20 identical. Rather than to take the time to have
21 him here, I'll handle all of those. I have one
22 witness who is Darrel Leamaster. Mr. Leamaster is
23 the manager of the Castle Valley Special Service
24 District and is involved in the Huntington City
25 Water Treatment Plant.

1 MR. CHAIRMAN: Mr. Johansen, would
2 you go ahead and present your objections, why
3 you think they are basic in regard to what you've
4 already heard?

5 MR. JOHANSEN: Would you like a brief
6 statement before we go into any witnesses and
7 determine whether or not you want to hear them or
8 not?

9 MR. CHAIRMAN: I think that would be
10 the direction we would be headed in.

11 MR. JOHANSEN: To clarify our position,
12 we are not seeking adjudication of any of these
13 issues, and we don't suppose that Emery County
14 should come to this Board to solve our problems.
15 We will enforce our own ordinance in District
16 Court and that's where it ought to be.

17 The purpose of our coming here, both
18 the City and the County, is that there are so many
19 entities that regulate the coal mines that we thought
20 if we could cooperate between us all and handle it
21 together so everybody knew what everybody else was
22 doing, that we could simplify the matter. The
23 County is strongly committed to coal development,
24 and they want to get that coal developed as fast
25 as possible and also as orderly as possible. It

1 would be a waste of time and money, particularly
2 of Co-op's in our judgment, if they went ahead in
3 a vacuum before the Board and got their approval
4 and came down and ran into Emery County and had
5 to start all over and argue with us about whether
6 or not the things we want done ought to be done.

7 So our purpose in being here today is
8 to make the Board aware of our position and hope-
9 fully to convince the Board that our position
10 ought to be incorporated into the Board's position,
11 so that when we get this approval for this mining
12 and development, and I have no doubt that the
13 approval will ultimately come, that it can be
14 done all at once. It would be cheaper and faster
15 for everybody involved. So we are not here asking
16 you to adjudicate our problems down there. We
17 understand what the jurisdiction limitations are.
18 However, our basis for being here is founded a
19 little bit on the State statute Section 40-8-22
20 which provides the Division will cooperate with the
21 local government in the furtherance of the purposes
22 of that Act, Chapter 8, 40-8-17 provides that the
23 approval of a Notice of Intention shall not relieve
24 the operator from responsibility to comply with all
25 other ordinances. Also we rely on Section 40-10-18

1 and 40-10-10 and 40-10-11, all of which speak of
2 the State's responsibilities and the Board's
3 responsibilities to see that the hydrologic balances
4 are not disturbed by coal operation. So we think
5 the Board has jurisdiction to hear us out and also
6 has jurisdiction to incorporate our concerns into
7 the requirements that the Board requires of Co-op
8 Mining Company.

9 Now, if I might, maybe this will shorten
10 things, but if I summarize what our testimony would
11 be and maybe we don't need that testimony, I would
12 propose--first of all let me give you a little back-
13 ground.

14 Huntington City has been working with
15 Co-op Mining Company for some time attempting to
16 reach an agreement. We have all been committed
17 to the idea that the Coal Mine in Big Bear Canyon
18 is going to happen. That development will take place.
19 Huntington City has a spring in that area and they
20 rely heavily upon that spring for their culinary
21 water. We are concerned that the mining activities
22 may disrupt that spring. Rather than oppose mining
23 at all in that canyon, we thought--let's reach an
24 agreement with Co-op Mining Company to cover that
25 potential disturbance, and we have been working with

1 them for some time in trying to reach an agreement.

2 I have with me a proposed agreement that
3 I would submit as an Exhibit to the Board so the
4 Board would know what the City's position is and
5 that would be the sole purpose of that exhibit.

6 Next I would call Mr. Leamaster who would
7 enlighten the Board as to the history of this
8 spring, the quality of the water, the quantity,
9 what records we do have and how it relates to the
10 overall water needs of Huntington City. I would
11 expect that not to take very long.

12 Then if Mr. Kingston permits, I would
13 submit an affidavit of one witness who is unable
14 to be here. Of course, that would be subject to
15 his approval. That witness would testify that this
16 particular mining development is a mine which existed
17 some years ago, and the mining operator at that time
18 ran into some water, a lot of water, and after
19 speaking with the City it was agreed by everybody
20 that that might disrupt the spring, so they pulled
21 out of that particular tunnel. That would be the
22 substance of that affidavit. That is what we
23 propose to do.

24 With regard to the County, I would not
25 put on any witnesses or offer any testimony, but

1 only make a statement to the effect that we've got
2 a zoning ordinance and we wish to cooperate with
3 the Board so that both could be handled--both the
4 Board's applications and requirements could be
5 handled with the County so that Co-op could
6 go through and handle them all at once and cooperate
7 with one another.

8 That basically is our position. Are
9 there any questions?

10 MR. CHAIRMAN: Would you like to address
11 the subject he raised or would you like to wait?

12 MR. KINGSTON: I would like to make a
13 few preliminary comments, Mr. Chairman. I think
14 it would be helpful first if we explained a little
15 bit about the mining operation that now exists and
16 what we propose by going over into Bear Canyon.

17 Co-op Mining does have at the present
18 time an existing working mine in Trail Canyon, just
19 across the mountain from Bear Canyon.

20 Now the property is all one parcel of
21 property. We cannot mine through Trail Canyon into
22 Bear Canyon because there is a major fault there.
23 In order to get to the coal which is also on this
24 property, we have to go around and go into it from
25 an existing mine which was mined several years ago

1 in order to get to that coal.

2 Now the objections that have been raised
3 particularly by the County concerned economic
4 impact, service impact and the rest of the problems
5 that would ordinarily be considered in a major
6 economic enterprise going into a small county
7 such as Emery. It is our position that by going
8 from one canyon into another there won't be any
9 impact. As far as services, Emery County does not
10 provide any services to Co-op Mining Company.
11 There is police protection if you need it. Co-op
12 Mining Company provides their own water. Utah
13 Power & Light provides the electricity. They
14 have their own sewer system and so on. So as far
15 as any impact, it's non-existent as far as we
16 can tell. These objections that are raised by
17 Emery County and I might also add by the Water
18 District are objections that are clearly covered in
19 the Utah statute which the State board has to control.
20 They issue the regulations. We've got to comply
21 with those regulations.

22 Now specifically with the point raised
23 by Mr. Johansen that we should in conjunction receive
24 the permit from the County before the State should
25 issue theirs, now it's hard for me to see how we

1 can do that. If the County says--you shouldn't
2 issue a permit until we issue ours," and then the
3 County says, "We can't issue a permit because you
4 don't have one from the State." That puts us in
5 a position where we will never get a permit.

6 I think the analysis presented by Ms. Drago from
7 the State Attorney General's Office is correct.
8 The considerations raised by Mr. Johansen should
9 be raised in a court of law. By saying that I don't
10 wish to give you the impression that we are going
11 to snub our noses at the County, the Huntington
12 City or the Water Conservancy District. We have
13 been trying to work with them for over a year. I
14 might add we've had a very good relationship with
15 Mr. Johansen and everybody says we want to agree,
16 but we have some points that we have to solve; but
17 each time we get together we'll draft an agreement.
18 We've gone through six, seven, eight, different
19 drafts of this agreement. They present one. We
20 present one. We get back six months later and we
21 are right back to square number one.

22 The problem we've got, particularly with
23 the spring is, "How do you determine that our mining
24 operation is interfering with their spring?" Now,
25 the evidence we have been able to compile, the experts

1 that we have talked to indicate that there is very
2 little possibility that the mining venture in Bear
3 Canyon is going to have any effect whatsoever on
4 that spring. Now if we do interfere with the
5 spring, if we do interfere with the flow, we ought
6 to be responsible. But, of course, the City's
7 position is and the Conservancy District's position
8 is that if for any reason that spring diminishes
9 in flow while we are mining, we have got to presume
10 we are responsible and we are going to provide
11 substitute water. The basis they use as far as
12 diminishing is awfully high. In other words,
13 they want us to guarantee that there is going to
14 be a constant flow of not less than 180 gallons per
15 minute flow from that stream. Records that we
16 have looked at indicate that just two years ago
17 or one year ago that spring was flowing at 120
18 to 160 gallons per minute. Obviously the spring is
19 going to diminish. I might add this year when it was
20 flowing at that rate, the precipitation during
21 that water year was 109 percent above average.
22 The last year has been 149 percent of average and
23 flowing at maybe at 210 or 220 gallons per minute.
24 It's going to go down. It's got to go down,
25 particularly if we have a drought year. Yet the

1 agreement that the City has proposed to ask us to
2 sign says if it drops below that 180 gallons per
3 minute for any reason, we are responsible, whether
4 we hit water in the mine or whether we don't, or
5 whether somebody else up the canyon hits water
6 or doesn't, it is our responsibility-- not only
7 to prove that we didn't do it, but while we are
8 doing that we've got the responsibility of supplying
9 substitute water. If we don't, we pay \$1,000 a
10 day penalty until we do. It's things like that
11 that we cannot resolve, Mr. Chairman, and that's
12 why we are here. We want to work with the County.
13 We want to work with the City. We want to work
14 with the Water Conservancy District. We made
15 application for the permit with the County. They
16 won't deny it and they won't approve it. They won't
17 tell us what we've got to do.

18 I think we do have someone from the
19 State Engineer's office present here today and has
20 done a study on the hydrologic system in that area.
21 Frankly, I haven't talked to him. I think he was
22 asked to prepare this report by Huntington City.
23 I don't know what his report says. Maybe he can
24 enlighten us on what the potential would be of the
25 mining operation interfering with the spring down

1 there. I hope he can do that. I don't know if it's
2 going to be favorable for us or unfavorable for us.
3 Again, I would like to echo the opinion
4 of the Attorney General's Office. I think we've
5 complied with the State regulations. I think as
6 long as we have done that, the State is obligated
7 to give us a permit. Now, if we still have to comply
8 with County regulations, then if there is still a
9 problem with Huntington City and the Water
10 Conservancy District down there, we intend to work
11 with them. We hope we can. We have been working for
12 a year and haven't gotten past first base. The
13 operation is high in the mountain down there and
14 if we don't get started right away, we're not going
15 to be able to start until next year in getting this
16 opened up. It's a tremendous economic burden. It
17 creates a tremendous economic loss if we can't get
18 in there this year. That's why we ask the permit
19 be issued and we be allowed to go in there and
20 we can start working with the City and the County
21 and the Conservancy District.

22 MR. CHAIRMAN: Would you like to respond
23 to that?

24 MR. JOHANSEN: Yes, sir. With regard
25 to the agreement that we have tried to work out with

1 Co-op between them and the City, I better clarify
2 that. The 180 gallons per minute that Mr. Kingston
3 referred to is not set in concrete. In fact, the
4 draft that I prepared for today leaves that figure
5 completely blank. The problem that we have run into
6 is that we have no reliable records, and so our
7 proposal is to reach a trigger point at which it
8 would be determined that the spring has been
9 interfered with. We have been receptive to any-
10 thing that the Co-op Mine might suggest to us whether
11 to go on gallons per minute or percentage reduction
12 in flow or any other formula and we have not had any
13 suggestions from them. So I just left it blank. We
14 are not asking for a blanket guarantee of our water
15 supply. We know that would be unfair. We are asking
16 for something that is burdensome, and we realize
17 that, and that is the culinary water supply is
18 something that is so precious and so important
19 to the City that we just can't risk it for a mining
20 development.

21 What we are proposing is that if there
22 is a disturbance of that spring, the Co-op Mine
23 will come in and replace the water, no questions
24 asked. Then if we can determine that they are not
25 the cause, we will reimburse them for any expenses

1 they did. That's the proposed agreement I have
2 here.

3 So far as permanent replacement, that is
4 only if they are the cause. As far as temporary
5 replacement, we really can't file a lawsuit about
6 our culinary water supply to determine who is at
7 cause while the people don't have water. We don't
8 have time to litigate that issue in the meantime.
9 As a price for going in there, we are asking for
10 Co-op Mine's guarantee temporarily that that
11 spring will not be disturbed. If it can be determined
12 a disturbance is not caused by them, they will be
13 reimbursed for any expense.

14 If we can think of a different way of
15 doing that, we would certainly be receptive to it.
16 That's the best we have been able to come up with.

17 With regard to the County, the zoning
18 ordinance is not really in debt regulating the coal
19 mines, but rather at compelling disclosure of
20 information. We want to know what large scale develop-
21 ments are doing and what they are planning so that
22 we can plan. In contrast to Mr. Kingston's opinion,
23 we are providing services. We have to respond with
24 all of our firefighting equipment if they need it
25 and we are happy to do so. Our police protection.

1 Their children go to our schools. So we have to
2 know if it is going to be 100 more workers or 100
3 more families going into that canyon to mine coal;
4 we have to know to plan on some new classrooms.
5 That's all the ordinance does basically is to compel
6 disclosure upfront of mining activities and plans.
7 While the process is somewhat lengthy, it's not a
8 burdensome ordinance. There is a several step process.
9 The Co-op Mining Company has entered into that
10 process and reached the point where it is incumbent
11 upon them to deliver some information which they
12 have not done. They are seeking to skip two or
13 three steps in that process and go directly to a
14 meeting with the Planning Commission. The Planning
15 Commission declined that because they are not
16 interested in meeting until they have enough informa-
17 tion to examine. So it's not that we won't tell them
18 what to do or what not to do, the ordinance is very
19 specific as to what ought to be done, and we are
20 just waiting for them to give us that information.

21 We are hoping that by cooperating with
22 the Board that the developer will see that it's
23 better to cooperate and to disclose the information
24 and to go through the processes than to take us on
25 one at a time and stonewall the whole thing which

1 will just make the process longer.

2 MR. BOX: I'd like to ask a couple of
3 questions.

4 MR. CHAIRMAN: Yes, go ahead.

5 MR. BOX: I would like to ask Denise
6 this; Denise, do we not have the jurisdiction and
7 responsibility to see the hydrologic balance is not
8 impaired?

9 MS. DRAGOO: That's correct.

10 MR. BOX: All right. Ron, or whoever
11 took this permit, what hydrologic studies were
12 presented to the staff and what basis do we have
13 to go on to say whether the hydrologic balance will
14 or will not be disturbed from this mining opera-
15 tion. It seems to me that that is the issue before
16 this Board, not a jurisdictional thing.

17 MS. DRAGOO: Under the present scheme
18 of regulations, water quality is protected under
19 the Board of Health, by the Board of Health. They
20 have a Bureau of Water Quality, and they issue jointly
21 with the Environmental Protection Agency an NPDES
22 permit, and they also regulate non-point source
23 pollution, and it is traditionally how we handle
24 these water quality issues. If they tell us that
25 they have issued an NPDES permit and they feel the

1 water quality is adequate, then we go ahead with our
2 considerations concerning reclamation of the land,
3 disturbance of soils and things like that. So we
4 really rely on the Bureau of Water Quality to tell
5 us what's happening in terms of degradation to the
6 hydrologic regime.

7 MR. BOX: I'm not talking about water
8 quality. I'm talking about total disruption of
9 the hydrologic regime, like water coming out of
10 different places than it should.

11 MR. DANIELS: I think I can address
12 that. Denise is correct to how people do regulate
13 mine water discharge and point sources. When
14 we got the permit from Co-op, our hydrologist at
15 the time who is not here, made a determination on
16 the information that was available to him based
17 on the geologic maps; there were no drill holes that
18 he bases his opinion on, but the determination in
19 the mining process that to the best of his knowledge
20 the only way those things could have been recharged
21 was due to the fault system. The stipulation that
22 we made as a Division was that no mining would be
23 done within 100 feet of two major faults. That
24 was based on the available information that we
25 had on ground water. Surface water, there are

1 of course, ponds and things like that that control
2 runoff. Tom, is there anything that you can add?

3 MR. SUCHOWSKI: No. That's basically
4 what I made my determination from.

5 MR. BOX: We were told in the opening
6 statements that evidence would be presented to this
7 Board that they had indeed encountered water in
8 there in large amounts and not in the fault.

9 MR. DANIELS: Yes. I guess we would
10 be willing to listen to that.

11 MR. CHAIRMAN: There is a man in the
12 back that has his hand up. Would you stand up and
13 state your name?

14 MR. KALISER: My name is Bruce Kaliser,
15 Chief Engineering Geologist for Utah Geological
16 and Mineral Survey. We are an agency as most of
17 you are probably aware that services to local
18 government as well as state government.

19 In this instance we have been requested
20 by Huntington City and Castle Valley Service
21 District which provides water to Huntington City
22 to examine the hydrologic implications of this
23 mining operation upon their culinary spring. We
24 have done this including a field examination. You
25 ought to be aware of that and if you would like

1 testimony, I am prepared today to give it.

2 Let me say that we do not have a written
3 report at this time, but I am prepared to give
4 verbal testimony if you would like.

5 MR. CHAIRMAN: Thank you.

6 MR. KINGSTON: I would like to make a
7 comment.

8 MR. CHAIRMAN: Yes.

9 MR. KINGSTON: Regarding the operations,
10 now we weren't aware that substantial amounts of
11 water were encountered in that mine. We were
12 aware that the fault was crossed by the previous
13 mining operation, and very little or no water
14 was encountered in passing through the fault which
15 is normally the place where the water would be
16 encountered. Now as far as water being encountered,
17 I don't think you can underground mine anyplace
18 in the country and not run into water. I don't
19 know what substantial amounts of water would be. I
20 don't know whether I would be willing, and I don't
21 want to be difficult, but I wouldn't be willing to
22 allow an affidavit from someone who is not here
23 to be cross-examined where it just says "substantial
24 amounts of water," and again I don't know whether
25 the substantial amounts of water corresponds with

1 the diminished flow in the spring at the same time
2 or whether it could have been water from some other
3 entirely different source which our research would
4 indicate. It would have to come from another source
5 because of the land, the valley up there. It does
6 not occur from our research, and maybe the testimony
7 Mr. Kaliser gives would be different from that, but
8 it appears the mine itself would not have any effect
9 on the flow to that particular spring.

10 MR. JOHANSEN: If I might just briefly
11 say that we think and we hope that these mining
12 activities will not affect the spring. We are not
13 here to try to show you that it will because we
14 don't know. We don't think it will, but the more
15 remote that contingency is, the more willing I
16 think Co-op Mining Company ought to be to cooperate
17 with us and guarantee that it won't. All we are
18 hoping is that contingency will be provided for,
19 and I don't think we will hear any testimony of a
20 certainty that this spring will not be interfered
21 with, and I sincerely think that the Board has
22 jurisdiction to hear that issue.

23 MR. KINGSTON: We've always taken the
24 position that if our mining operations interferes
25 with their water, we will be responsible. We won't

be responsible for somebody else's mining operation. We won't be responsible for an act of God. We won't be responsible for a drought. I haven't seen the last draft that Mr. Johansen prepared. We did submit a draft and we were willing to base or trigger the agreement upon a diminution of 20 percent based on some kind of an average, then we would take steps to replenish the water system.

The position they are taking, and I guess it's reasonable from their standpoint, but I can't see it, is that for any reason that it diminishes, whether from our mining operation or some other mining operation or any other reason, we've got to be responsible to replenish that system until we prove we didn't do it. That isn't reasonable because there are so many other factors that can do that; there isn't any way in the world you can tell that maybe no way we didn't do it but you don't know what did it, but in the terms of that proposal, we still have to be responsible to furnish them water with a thousand dollar a day penalty.

MR. CHAIRMAN: Thank you. Now what we are going to do is take a five minute intermission here and we will decide how much evidence we will hear and we will try to decide where we are going.

1 We will take a five minute break at this point.

2 (Whereupon a recess was had.)

3 MR. CHAIRMAN: If everybody will please
4 come to order, we are going to continue and what we
5 are going to ask is that you limit your testimony
6 and your comments to the balance of the hydrologic
7 regime. We'll leave the ordinance and problems
8 with Emery County and we won't talk about the
9 quantity of water. We are just going to talk about
10 any effects on the hydrologic regime. You may go
11 ahead on that basis.

12 MR. JOHANSEN: Water quality only?

13 MR. CHAIRMAN: No, hydrologic regime
14 only.

15 MR. JOHANSEN: With the Board's
16 permission, I would submit to the Board what I
17 labeled Exhibit No. 1 which is the proposed agree-
18 ment between Huntington City and Co-op, and ask
19 that to be admitted as Exhibit No. 1.

20 (Whereupon Protestant's Exhibit No. 1
21 was marked for identification.)

22 MR. CHAIRMAN: Now let me ask you this,
23 this is presented by you to them?

24 MR. JOHANSEN: Today.

25 MR. CHAIRMAN: They have not seen it?

1 MR. JOHANSEN: No. We've discussed
2 everything in it, but this particular draft they
3 have not seen and it is more a statement of our
4 position for your benefit than anything else so
5 you understand what we are asking.

6 MR. CHAIRMAN: Are there any objections
7 to accepting this?

8 MR. KINGSTON: We haven't seen it yet.

9 MR. CHAIRMAN: We will hold up on
10 accepting it.

11 MR. JOHANSEN: We call Mr. Darrel
12 Leamaster.

13 DARREL LEAMASTER,
14 called as a witness by and on behalf of Huntington
15 City, being first duly sworn, was examined and
16 testified as follows:

17 EXAMINATION

18 BY MR. JOHANSEN:

19 Q Would you state your name, residence and
20 occupation, please?

21 A Yes. My name is Darrel Leamaster. I'm
22 a resident of Huntington. I'm a graduate in Civil
23 Engineering from the University of Utah and a
24 Registered Professional Civil Engineer in the
25 State of Utah. I am currently employed as the

207/071 [unclear]
1 Manager of the Castle Valley Special Service
2 District.

3 Q Could you explain to the Board the
4 relationship between Castle Valley Service District
5 and Huntington City?

6 A The Castle Valley Special Service
7 District is a local government agency. We
8 provide services to seven communities in Emery
9 County. The services that we provide are culinary
10 water, sewage services and roads and streets.

11 The Castle Valley Special Service
12 District has an intergovernmental local agreement
13 between Huntington City in which we agree to operate
14 and maintain their water system as well as provide
15 new facilities as they are required.

16 Q Mr. Leamaster, would you refer to please
17 what we have marked for identification purposes as
18 Exhibit No. 2?

19 A Yes.

20 (Whereupon Protestant's Exhibit No. 2
21 was marked for identification.)

22 Q Would you identify for the Board the
23 location of the spring, the proposed minesite and
24 any other pertinent points?

25 A Yes. This basically is a location map.

1 You'll see in the righthand corner the location of
2 the town of Huntington. In a northwesterly direction
3 State Highway 31 goes up Huntington Canyon. You'll
4 notice we have a notation there as far as a water
5 treatment plant. This is a treatment plant that
6 takes water from the Huntington River and treats it
7 for culinary purposes.

8 We have in addition to that another
9 source of water which is the spring supplies. Our
10 first spring is located in Bear Canyon, and you
11 will note in the Bear Canyon area that we have
12 indicated the approximate location of our spring,
13 and also the approximate location of the proposed
14 coal mining operation. They are separated by
15 approximately one-half mile.

16 On up the highway in the upper lefthand
17 corner, you will notice Little Bear Canyon, and we
18 do have a spring in the Bear Canyon area that we
19 also use as a water supply.

20 MR. MCINTYRE: I have a question.

21 MR. CHAIRMAN: Yes, go ahead.

22 MR. MCINTYRE: What's the difference
23 between the elevation in the spring and the coal
24 mine?

25 THE WITNESS: I can't give you an exact

1 figure. I would estimate 150 to 200 feet is the
2 elevation difference.

3 MR. KALISER: I have 320 feet.

4 THE WITNESS: 320 feet. We do as I
5 mentioned have spring lines all the way from Little
6 Bear Canyon to Huntington Town. We are about 9.4
7 miles up to the Bear Canyon spring and an additional
8 two miles up the Little Bear Canyon spring.

9 The one thing I failed to show on this
10 drawing and I should have shown is the Trail Canyon.
11 The Trail Canyon is the site of the present Co-op
12 Mining Operation, and it is right directly across
13 the canyon from Rilda Canyon. They are on that
14 side of the canyon now and they propose to move to
15 the opposite side in their canyon.

16 MR. CHAIRMAN: You said you have gone
17 up two miles up Bear Canyon to the spring?

18 THE WITNESS: No. Up Bear Canyon we
19 are up approximately 3/4 of a mile from the mouth
20 of the canyon.

21 MR. CHAIRMAN: I misunderstood.

22 Q (By-Mr. Johansen) Explain the Little
23 Bear Spring. That's where the misunderstanding was.

24 A We were approximately up two miles on
25 up the canyon from Bear Canyon to the Little Bear

1 Canyon Spring.

2 Q The upper lefthand corner of Exhibit 2,
3 is that correct?

4 A Yes. We have two springs. The Little
5 Bear Spring and Bear Canyon Spring.

6 MR. CHAIRMAN: Go ahead. I see what
7 you said.

8 Q (By Mr. Johansen) What, if any difference
9 is there between the proposed mining site and the
10 Adams Black Diamond Mine?

11 A I believe they are the same site.

12 MR. JOHANSEN: We move for the admission
13 of what has been identified as Protestant's Exhibit
14 No. 2.

15 MR. CHAIRMAN: Are there any objections
16 to this exhibit?

17 MR. KINGSTON: No objection.

18 MR. CHAIRMAN: It will be accepted.

19 (Whereupon Protestant's Exhibit No. 2
20 was received in evidence.)

21 Q (By Mr. Johansen) Would you briefly
22 tell the Board of the history of that spring?

23 A Huntington City first developed a water
24 system in 1911. This system took water from the
25 canal and gave it just a settling and chlorination

1 treatment and then put it into the system.

2 In 1939 they began construction of the
3 mine up to Bear Canyon and this was completed in
4 1941. They purchased in 1941 exclusive rights from
5 the owner and from the Huntington-Cleveland Irrigation
6 Company to own all of the water from the Bear Canyon
7 Spring. Since 1941 they have used that continuously
8 for their culinary water supply. The supply was
9 expanded in the late 1950's when they run up the
10 canyon to tie in the Little Bear Canyon Spring.

11 Q Would you now turn to what we have marked
12 for identification purposes as Exhibits 3A and 3B?
13 Briefly identify those two exhibits for the Board.

14 (Whereupon Protestant's Exhibits 3A and
15 3B were marked for identification.)

16 A 3A and 3B are inorganic chemical analysis
17 of the spring water from Big Bear Spring. The
18 Exhibit No. 3A was collected in November of 1977,
19 and Exhibit 3B was collected in April of this year,
20 April of 1980.

21 These types of tests for inorganic chemicals
22 are required yearly now since the Safe Water Drinking
23 Act has been enforced. Prior to its enforcement,
24 these kinds of tests were done on a two or three year
25 time scale by the State Health Department.

1 3A was collected in fact by the State
2 Health Department by Mr. Larry Scanlin. Both
3 of them were analyzed by the Ford Chemical Laboratory
4 here in Salt Lake who are certified by EPA to do
5 this kind of work. Basically what we will show
6 from these is the water supply we have is of very
7 good quality. It complies with all the Safe Water
8 Drinking Act requirements. We use it with minimal
9 to no treatment. It's collected right out of the
10 springs and goes right into our distribution system.
11 The only treatment we give it is chlorination.

12 Q Can you now turn to what has been marked
13 for identification purposes as Exhibit 4.

14 (Whereupon Protestant's Exhibit No. 4
15 was marked for identification.)

16 MR. JOHANSEN: While I'm handling that-
17 we will ask for the admission of Exhibits 3A and 3B.

18 MR. CHAIRMAN: Are there any objections?

19 MR. KINGSTON: The only purpose for
20 admitting these exhibits is to show the water quality
21 and not that it has deteriorated or anything?

22 MR. JOHANSEN: That's right.

23 MR. KINGSTON: I won't object. It's
24 hearsay, but I won't object.

25 MR. CHAIRMAN: It will be received.

1 (Whereupon Protestant's Exhibits 3A
2 and 3B were received in evidence.)

3 Q (By Mr. Johansen) Now will you identify
4 Exhibit 4 and explain it to the Board?

5 A Exhibit 4 is related to Exhibit 3A and
6 3B. Here we have the chemicals that have allowable
7 limits. The maximum limits have been placed on
8 by the Safe Water Drinking Act and the Utah State
9 Health Requirements.

10 We have in the lefthand column the
11 "Chemical Name". The next column is the "maximum
12 limit that is allowed by the Safe Water Drinking
13 Act and then the chemical analysis which were
14 exhibited in 3A and 3B. This is just a comparison
15 of where the water stacks up versus the Safe Water
16 Drinking Act requirements.

17 As you will study down through it, we
18 comply with all of the requirements. We have none
19 of the chemicals that give us any problems for
20 compliance of the Safe Water Drinking Act
21 requirements.

22 MR. JOHANSEN: We will ask for the
23 admission of Protestant's Exhibit No. 4.

24 MR. CHAIRMAN: Are there any objections?

25 MR. KINGSTON: No objection.

1 MR. CHAIRMAN: Exhibit 4 will be
2 received in evidence.

3 (Whereupon Protestant's Exhibit No. 4
4 was received in evidence.)

5 MR. JOHANSEN: Can you turn to what
6 has been marked as Exhibit No. 5?

7 (Whereupon Protestant's Exhibit No.
8 5 was marked for identification.)

9 Q (By Mr. Johansen) Would you identify
10 what has been marked for identification as Exhibit
11 No. 5, please?

12 A Yes. Exhibit No. 5 is a tabulation of
13 the flow data that we have been able to find on the
14 Bear Canyon Spring. There is not a lot of flow
15 data available.

16 The first figures starting on June 25,
17 1970 down through May 27, 1971 were obtained from
18 Utah Power & Light Company. They were studying the
19 spring to see if they could possibly use it in their
20 new power plant in the Huntington Canyon Area. I
21 couldn't tell you exactly how they measured those,
22 but that is the measurement they obtained during
23 those time periods.

24 May '71 and June '71 were collected by
25 Valley Engineers who were consulting engineers hired

1 by Huntington City to study additional water sources
2 for the community.

3 The following figures are figures that
4 were taken from flow meters that the Castle Valley
5 Special Services District has installed in the four
6 inch line that moves away from the spring. Those
7 were installed on January 22, 1980 and have been
8 in operation since.

9 The last figure on the page for
10 June 16, 1980 was taken this Monday. We, at the
11 present time, have an overflow from this spring.
12 Our line is not hydraulically able to carry any
13 more water. So we have 265 gallons per minute
14 going down the spring line and approximately 75
15 gallons per minute that is going to waste that we
16 cannot handle.

17 MR. JOHANSEN: I move for the admission
18 for what has been identified as Exhibit 5.

19 MR. KINGSTON: I will have to object to
20 that. I don't know that the figures prior to
21 January 1980 would be reliable. It certainly
22 would be hearsay. It contradicts the information
23 that we've got.

24 MR. JOHANSEN: May I respond to that?

25 MR. CHAIRMAN: Yes.

1 MR. JOHNSON: We certainly don't
2 vouch for the veracity of those figures, either.
3 We don't know whether they are reliable or not.
4 They are only offered to show that those are the
5 figures that we have. We don't know whether they
6 are, in fact, reliable.

7 MR. CHAIRMAN: We'll accept it for
8 its probative value and not necessarily for its
9 accuracy.

10 (Whereupon Protestant's Exhibit No. 5
11 was received in evidence.)

12 Q (By Mr. Johnson) Explain now to the
13 Board the significance of this spring in Bear
14 Canyon as it relates to the entire Huntington
15 City water system.

16 A Okay. As I mentioned, we have two
17 sources of water. One is from the treatment
18 plant in Huntington River. That treatment plant
19 has the capacity of 900 gallons per minute. It
20 has been completed for approximately two years,
21 but has been plagued with a number of problems
22 and has not operated for more than two months
23 in that two year period.

24 Our plans are to use the water treatment
25 plant during the summer time when we have a high

1 demand on water and rely on the springs during the
2 winter periods when the demand is not so high. During
3 the winter we have approximately four hundred gallons
4 per minute from the two springs, so it would be Bear
5 Canyon Spring represents about 60 percent of our
6 total supply. During the summer, if the treatment
7 plant were operated at full capacity of 900 gallons
8 per minute, then the Bear Canyon Spring would rep-
9 resent about 15 percent of our total supply.

10 Q What percentage of that total supply
11 from that spring represents, if you know, during
12 the immediate past when the treatment plant was
13 down?

14 A About 60, 61 percent.

15 MR. CHAIRMAN: On this Exhibit 5, is
16 that measured from a meter? I'm talking about
17 June 16, 1980?

18 THE WITNESS: 265 gallons per minute
19 was measured from an in-line meter. The additional
20 75 gallons per minute was measured with a B-notch
21 weir in the overflow. We had an overflow pipe
22 that comes out of our spring boxes, and then we
23 installed the B-notch weir downstream and measured
24 that in the channel downstream.

25 MR. CHAIRMAN: That water was still

1 identical and clear at that time?

2 THE WITNESS: Yes.

3 MR. CHAIRMAN: No sediment to make it
4 a high flow?

5 THE WITNESS: No. I would suspect
6 that the turbidity is 4 tenths or 5 tenths of an
7 NTU.

8 MR. CHAIRMAN: Okay. Go ahead.

9 Q (By Mr. Johansen) What if any informa-
10 tion do you have with regard to the source of that
11 spring?

12 A I really don't have any concrete
13 information on the source of the spring, and we
14 have not had. We, therefore, contacted the Utah
15 Geological and Mineral Survey people and asked
16 them if they would conduct a study of this spring
17 to get that kind of information for us.

18 Q What are your future plans with regard
19 to that spring in Bear Canyon?

20 A Last Thursday, Huntington City was
21 awarded a grant from the Community Impact Award
22 for \$215,000, and Huntington City will provide an
23 additional \$100,000 and we will replace the spring
24 lines from the Utah Power & Light Plant on up
25 the canyon. They are 40 years old. They are in

1 bad repair and they are not large enough in size.
2 We have immediate plans to replace those spring
3 lines. We are counting on that source of supply
4 for a long time in the future.

5 Q Do you have an opinion as to whether
6 this mining operation could interfere with the
7 spring?

8 MR. KINGSTON: I object to that. He
9 testified he has no information on the source.

10 MR. JOHANSEN: I think that will be
11 his answer.

12 MR. KINGSTON: Okay.

13 THE WITNESS: Yes. I wouldn't purport
14 to know for sure whether it will interfere with
15 the spring or not. We are concerned about it,
16 but I couldn't say for sure it would.

17 Q (By Mr. Johansen) On what do you base
18 your concern?

19 A Just the proximity of the mining opera-
20 tion to the spring and the lay of the land. If
21 they will be mining in the area by our spring
22 flow. So we are concerned that something may
23 happen to interfere with the flow.

24 MR. JOHANSEN: At this point, if the
25 Board pleases, I would offer the Affidavit which

1 I've spoken of and we realize it would have been
2 better to have a witness here, but he is out of
3 the State; and for whatever probative value it
4 has. We realize the mining company does not have
5 the opportunity to cross-examine. We offer that.
6 It's not identified and we ask that it be
7 identified as Exhibit No. 6.

8 (Whereupon Protestant's Exhibit No. 6
9 was marked for identification.)

10 Was Exhibit No. 5 received?

11 MR. CHAIRMAN: Exhibit No. 5 was
12 received for probative value only.

13 MR. KINGSTON: I object to the admission
14 of the Affidavit, Exhibit No. 6. It would be
15 hearsay because it refers to the concerns of
16 Huntington City and others in the Affidavit. It
17 refers to the accumulation of lodgepoles inside
18 the mine without any indication of the amount of
19 water.

20 MR. JOHANSEN: We regret we do not have
21 this witness to testify. We freely admit that the
22 weight this Affidavit should be given is very
23 limited. We believe the objections go to the
24 weight, not the admissibility, and ask that it
25 be received for whatever weight it does have.

1 MR. CHAIRMAN: I think we will refuse
2 to receive this Affidavit.

3 MS. DRAGOO: Just for clarification
4 sake, we can accept hearsay evidence for whatever
5 it is worth.

6 MR. CHAIRMAN: Well I'll ask the
7 Board if they think we should accept it for
8 probative value.

9 HEARING OFFICER: It has little
10 probative value.

11 MR. CHAIRMAN: I guess that's true.
12 I don't believe it has any particular probative
13 value. We will accept it for what it has.
14 We'll put that particular notation on it. We
15 will receive it for that particular purpose.

16 (Whereupon Protestant's Exhibit No. 6
17 was received in evidence.)

18 MR. JOHANSEN: Thank you. At this
19 time we renew our offer of Exhibit 1.

20 HEARING OFFICER: May I first ask
21 Mr. Leamaster a couple of questions? Could you
22 lay a foundation for Exhibits 2 through 5? Were
23 these Exhibits prepared by you or under your
24 supervision?

25 THE WITNESS: Yes, they were.

1 HEARING OFFICER: Except for
2 Exhibits 1 and 6?

3 THE WITNESS: Correct.

4 MR. JOHANSEN: We would renew our
5 offer of Exhibit 1 at this time, and I have no
6 further questions.

7 MS. DRAGOO: Could you summarize
8 Exhibit No. 1 for the Board?

9 MR. JOHANSEN: The contents or the
10 purpose of it?

11 MS. DRAGOO: The contents.

12 MR. JOHANSEN: We've gone over most
13 of those. This is a proposed agreement prepared
14 by the City which sets forth our position with
15 regard to this matter.

16 Paragraph No. 1 gives the City the
17 right to make inspections in the mine. I don't
18 know that Co-op Mining objects to that.

19 Paragraph No. 2 gives the City the
20 obligation of maintaining the flow meter on the
21 spring.

22 Paragraph 3 is along what in essence
23 what we have already discussed. It says if there
24 is a loss of flow or quality, rather than litigating
25 the cause of that while we are all without a drink

1 of water, the Co-op Mining Company will agree to
2 come in and guarantee that temporarily, and then
3 if they are not the cause we will reimburse the
4 Company.

5 HEARING OFFICER: Could I stop you
6 just one moment?

7 MR. JOHANSEN: Yes.

8 HEARING OFFICER: It was felt the
9 City didn't have adequate funds to do this on
10 their own, is this the idea?

11 MR. JOHANSEN: We just don't want to
12 fight a lawsuit. And regardless of who is ultimately
13 at fault, if we are going to risk losing our
14 culinary water supply--

15 HEARING OFFICER: That's just if it
16 drops below a certain figure?

17 MR. JOHANSEN: Then nobody's at fault.

18 HEARING OFFICER: Have you put in here
19 that nobody is at fault?

20 MR. JOHANSEN: Yes.

21 HEARING OFFICER: How do you know if
22 anybody is at fault when you have a couple of bad
23 years?

24 MR. JOHANSEN: Under those circumstances
25 I don't think we would expect anyone to pick that

1 up.

2 HEARING OFFICER: That is not spelled
3 out here. As I read it it says here that if
4 anything happens Co-op has to go immediately
5 within ten days and take care of the problem and
6 then you can sit around and wait and find out
7 who's responsible.

8 MR. JOHANSEN: If that's what it says,
9 that's what we intended to say.

10 HEARING OFFICER: If there is any
11 responsibility.

12 MR. JOHANSEN: If that's what it says,
13 then that is what we intended to say. We hope
14 the figure that we will put in that blank there
15 will be one that is reasonable and not so that
16 everybody is satisfied that if it drops that
17 low that there is definitely someone at fault.
18 Hopefully that figure will take care of drought
19 years and so forth. I represent Huntington
20 City will not be unreasonable in that. If it's
21 clear a bad year is at fault, we are not going to
22 be unreasonable in that regard.

23 HEARING OFFICER: If the data is
24 available.

25 MR. JOHANSEN: Yes. If we had the

1 figures. If we have reliable figures. That's
2 why we don't vouch for the veracity of the flow
3 figures we do have. If we had those, and we
4 could rely on those, then it would be a lot easier.

5 HEARING OFFICER: Mr. Leamaster, did
6 you say 60 percent of your water came from this
7 spring?

8 THE WITNESS: The spring source, 60
9 percent.

10 HEARING OFFICER: How much from this
11 spring particularly?

12 THE WITNESS: Sixty percent.

13 HEARING OFFICER: Is that year around?

14 THE WITNESS: During the wintertime
15 period. In the wintertime we do not operate the
16 surface water treatment plant. We run strictly
17 on springs.

18 MR. JOHANSEN: What we have just dis-
19 cussed covers paragraphs 3, 4 and 5.

20 Paragraph 6 says that the City will
21 compel any other mining operation in the area to
22 sign a like agreement so that if a new company
23 comes in, Co-op will not be guaranteeing their
24 actions.

25 Paragraph 7 is a termination clause,

1 five years after the termination of the company's
2 activities.

3 Paragraph 8 is a surety gaurantee.

4 Paragraph 9 is the Attorney's fees
5 clause.

6 Paragraphs 10 and 11 deal with the
7 withdrawal of the City's protest before this
8 Board.

9 Paragraph 12 is a reservation of a
10 right to protest a further or new application
11 before this Board.

12 Paragraph 13 is a successor's and
13 interest clause.

14 MR. CHAIRMAN: Do you care to make
15 any comments, Mr. Kingston?

16 MR. KINGSTON: The only comment I wish
17 to make, Mr. Chairman, is I really haven't had a
18 chance to study this. Similar in a number of
19 respects of what we have been proposing back and
20 forth in the last nine or ten months. The only
21 problem we have got as I see it briefly is with
22 paragraphs 3 and 4 on the strict guarantee. Also
23 7 and 8. Seven may be reasonable, I don't know.
24 Under paragraph 7 we would be responsible for
25 five years after we terminate our mining operation

1 to continue with this guarantee, if that's what
2 is required. Five years seems like an awfully
3 long time for us to guarantee after we are no
4 longer there. The water source is going to remain
5 the same. The amount of surety bond, now our
6 proposal was \$10,000. It may be a little low.
7 I don't know if they can come up with a counter-
8 offer. We might be able to live with paragraph 8
9 as long as the amount of the surety is not excessive.

10 MR. JOHANSEN: I might state that the
11 purpose of this submission is more of a position
12 statement for the City than asking this Board to
13 agree to that contract. That's the purpose of
14 having it here.

15 The matter dealt with in paragraph 3
16 is a very difficult issue. We just don't plain
17 have the figures to come up with or a way to
18 guarantee that flow. We would certainly be happy
19 to change that if the Co-op Mining Company has
20 other suggestions.

21 MR. KINGSTON: For that purpose, I
22 won't object. I will state that we had proposed
23 alternative ways of determining the cause. We
24 suggested each one hire a hydrologist in making
25 a study to determine the cause, the diminution

1 of flow. If they cannot agree, the two that
2 had been selected will have to get an independent
3 third hydrologist or someone to determine the
4 cause.

5 Again, our objection is simply that we
6 don't want to guarantee the acts of God. We don't
7 want to guarantee the acts of a mining company up
8 the road. In all likelihood there will be a
9 mining company just above us where we are which
10 appears to be a direct area where the spring has
11 a source, and they will be mining there. If they
12 do it and they cause the diminution, we are still
13 responsible until we prove we didn't.

14 MR. CHAIRMAN: We will accept this
15 strictly because it does show the position of the
16 city. It doesn't answer any questions. It doesn't
17 deal with hydrologic regime. We'll accept it for
18 that purpose and proceed and try to get the face
19 of the information that we need.

20 MR. DANIELS: I have a question about
21 the replacement of the water system. The pumping
22 from the two springs, is that a complete replace-
23 ment of the system for both Little Bear and Big
24 Bear Springs all the way to the plant?

25 THE WITNESS: In 1977, they replaced

1 states that if Co-op Mining contributed to that,
2 where is Co-op Mining going to get the additional
3 water to replace it?

4 THE WITNESS: That's another difficult
5 question. One of the things that has been purported
6 is if they came across the water inside the mine,
7 they would be able to capture any in there and
8 pipe it out and put it back into the system. It's
9 a matter of a quick remedy.

10 If they completely destroyed it and had
11 to replace it on the open market, that would mean
12 that they would have to purchase water shares from
13 the Huntington Canal Company, and somehow either
14 from another spring or through the water treatment
15 plant capacity replace it, so it would be a difficult
16 problem.

17 MR. McINTYRE: Is that water available
18 in that area for them to replace it?

19 THE WITNESS: Not immediately.

20 MR. McINTYRE: How could they put under-
21 ground mining water if encountered in the mining
22 operation into a culinary water system?

23 THE WITNESS: Only if it would meet
24 the quality of the water system.

25 MR. McINTYRE: How could they meet the

1 quality?

2 THE WITNESS: I think that's part of
3 our point. If that flow is lost, it's going to be
4 an extremely difficult problem for the City to
5 replace it and expensive. We feel like we were
6 there and used the water for 40 years. If they
7 want to move in and take that chance of disturbing
8 our flow, then that's the gamble they have to take
9 in their coal mining operation.

10 MR. CHAIRMAN: Jack, did you have a
11 question?

12 HEARING OFFICER: I'd like to address
13 this question to both attorneys.

14 Paragraph 3 is really the big objection.
15 Four kind of ties in with three because it's almost
16 a strict liability situation. If anything happens,
17 Cop-op has to take some action.

18 MR. JOHANSEN: Temporarily.

19 HEARING OFFICER: Could it be possible
20 to put in something that a third party hydrologist
21 or some company would determine that the loss of
22 this spring was due to some type of negligent
23 action or something like this, a little extra
24 time. Do you see what I'm getting at? To get to
25 third party and say is this just weather or is it

1 one of those things. Could you throw something in
2 like that? Then the third party could then say,
3 yes, I think it is something that has to do with
4 the mine. Then it would be proven and it would
5 be something that the third party could get you
6 off dead center and it wouldn't be a strict
7 liability type of a situation.

8 MR. JOHANSEN: Our position on that
9 would be that that possibility is inherent within
10 the agreement because when we get around to
11 deciding who is at cause, whether we litigate
12 it or sit down and have independent people look
13 at it, we will determine who is at fault. But
14 on a short term, immediately, we have got to pro-
15 vide drinking water for a City of 2,500 people.
16 We are not going to be able to sit around and
17 wait for a study or wait for a litigation or
18 anything else on a short term. On a long term we
19 will do whatever is necessary to determine who is
20 at fault.

21 HEARING OFFICER: You see you will have
22 very few people signing the agreement. You wouldn't
23 advise a client to sign it. I wouldn't advise a
24 client to sign it. It's like if somebody rams my
25 car, I want my car right away. I get it fixed myself

1 and then I can drive it.

2 MR. JOHANSEN: My response to that is
3 if Co-op Mining has assured us their operation will
4 not interfere with the spring, if that is the case
5 and if they are comfortable with it, then this
6 agreement is meaningless, isn't it?

7 HEARING OFFICER: No, it isn't. It
8 still goes back to the point of if something happens
9 regardless of whether the mining operation created
10 the problem or not, they have to take action. That's
11 the thing and the problem I have.

12 MR. JOHANSEN: Right now that is our
13 position bearing in mind that complete reimbursement
14 is also in the agreement.

15 HEARING OFFICER: Of course. They have
16 to have the money as well as Huntington to come up
17 with water.

18 MR. JOHANSEN: That's our position. We
19 would rather something as important as culinary
20 water supply, we would rather not have any develop-
21 ment in the area than take a chance of losing that
22 water supply.

23 HEARING OFFICER: Is there any possibility
24 of getting anything from Utah Power & Light's
25 ponding area in an emergency?

1 MR. KINGSTON: Our proposal is basically
2 that if any independent party determined that we
3 were at fault or probably at fault, we would be
4 happy to bear the burden. If it can't be determined,
5 then that's another question.

6 HEARING OFFICER: Let's try to proceed.
7 Let's get on to the testimony on the hydrologic
8 regime.

9 MR. JOHANSEN: I have no further
10 testimony at this time.

11 MR. CHAIRMAN: Mr. Kingston, do you
12 want to cross?

13 MR. KINGSTON: Yes.

14 CROSS-EXAMINATION

15 BY MR. KINGSTON:

16 Q Mr. Leamaster, you have been the
17 Huntington City Engineer for how long, did you
18 say?

19 A About two and a half years. I have
20 been with the service district for three years.
21 We didn't start immediately during the operation
22 and maintenance for Huntington, so it's about two
23 and a half years.

24 Q Do you have any familiarity with the
25 spring flow of that particular spring prior to the

1 time you became involved up there?

2 A Just the information I obtained from
3 Huntington City which came on the exhibit from
4 Utah Power & Light and from Valley Engineer's
5 consulting engineers.

6 Q You indicated that you are not aware
7 of a time when you had an overflow situation where
8 you have been in there in the last two years. Are
9 you aware of a time prior to that time where you
10 had an overflow situation on that stream?

11 A I'm not aware.

12 Q And would you agree that this is probably
13 the best water they have in that area for the last
14 10 years.

15 A I would think that's probably correct,
16 yes.

17 Q Wasn't there, in fact, a flow meter on
18 that spring between April of '78 and December of
19 '78?

20 A In the summer of '77 they had a
21 contractor who reworked the collection boxes for
22 the spring, and part of that project was to install
23 new flow meters on the spring line.

24 Q And there were actually flow readings
25 taken from that spring were they not between

1 April and December of 1978?

2 A There were a few flow meter readings
3 taken. However, those are suspect because those
4 flow meters never worked properly, and they only
5 worked for just a short amount of time and quit
6 functioning all together. The USGS read some
7 of those meter readings during the summer of '77
8 and I think in the spring of 1978.

9 Q And the USGS, in fact, used those flow
10 meter readings in their reports, did they not?

11 A I suppose they probably did.

12 Q You are aware that those flow meter
13 readings ranged from 110 gallons per minute to
14 160 gallons per minute?

15 A I don't know exactly what they've got.
16 We advised the USGS that we didn't think those
17 meters were accurate and they were wasting their
18 time reading them.

19 Q In fact, they were meters, were they
20 not?

21 A Yes.

22 Q And that was where the readings were
23 obtained from those meters?

24 A Well, I don't know what the readings
25 were.

1 Q Do you know what the precipitation
2 factor has been in that area for the year 1979 and
3 1980?

4 A Yes. It's above average. I couldn't
5 tell you the exact figure. It's above average.

6 Q It wouldn't surprise you to hear that
7 it's 150 percent?

8 A No.

9 Q Would it surprise you that the precipi-
10 tation factor for the year 1977, '78, was 109
11 percent?

12 A No.

13 MR. KINGSTON: That's all the questions
14 I have.

15 MR. CHAIRMAN: Are there any other
16 questions?

17 MR. SUCHOWSKI: I have a few questions.
18 Mr. Leamaster, on your reworking of the pipeline
19 above the treatment facility to Little Bear Spring
20 and Big Bear, what would be the change in percentage
21 at that point as far as water supply during the
22 winter months to the City?

23 THE WITNESS: When we get that completed,
24 we will obtain more spring flow from the Little Bear
25 Spring than we presently are by approximately 100

1 gallons per minute, so probably it would be nearly
2 50 percent, maybe even a little more. Approximately
3 55 percent would come from Little Bear and 45 per-
4 cent from Big Bear at that point in time.
5 Approximately.

6 Now in regards to your questions about
7 the USGS, we do have a letter on file at home where
8 we have written the USGS and advised them that those
9 flow meters were not accurate, and we have letters
10 where we have written back to the consulting engineer
11 asking the contractor to repair or replace those.

12 Q By not being accurate, they could be
13 excessive or less than what actually was flowing?

14 A They could be in either direction, yes.

15 Q Mr. Leamaster, there isn't any question
16 in your mind that the flow does fluctuate widely
17 from year to year and from season to season?

18 A I think what we have seen this spring
19 has shown us it does fluctuate quite considerably.
20 When we put the meter on we were running about
21 223 gallons per minute and we are not up to 340
22 gallons per minute, so that's a wide fluctuation.

23 Q You can anticipate from one year to
24 the next that you can get a 50 percent fluctuation
25 or even more?

1 A A wide fluctuation, yes.

2 MR. KINGSTON: That's all I have.

3 MR. CHAIRMAN: Are there any

4 questions from anyone on the Board? (No response)

5 Will you have any witnesses, Mr. Kingston?

6 MR. KINGSTON: Yes. I will have

7 Mr. Wendell Owen.

8 MR. CHAIRMAN: Just a minute, Ron

9 Daniels has something to say.

10 MR. DANIELS: This may or may not be

11 appropriate to the case at hand, but since you were

12 talking about the flow of Little Bear Spring, do

13 you recall that about three years ago the Board

14 held a hearing with regard to the possibility

15 of diminution of flow at that spring? That's

16 the same type of situation as this, and I was

17 curious if you had experienced as a result of

18 Swisher Mining Operation any type of changes

19 in the flow at Little Bear?

20 THE WITNESS: Not to this point in

21 time. I would mention that Huntington City did

22 enter into an agreement similar to the one we are

23 talking about with Co-op on that Swisher proposi-

24 tion up there in the Little Bear Spring.

25 MR. SUCHOWSKI: On that same point,

1 did the Swisher operation or had they mined near
2 the spring; had their operations continued or
3 affected that area in any way?

4 THE WITNESS: They haven't been real
5 active up there for the last--I don't know how
6 long. They haven't been operating up there for
7 about a year, so they haven't really gotten much
8 closer to our spring than they were when they went
9 into it.

10 MR. CHAIRMAN: Thank you very much.
11 Before you proceed we have the opportunity to have
12 Bruce Kaliser who is prepared to give us some
13 information. We would like to have him testify.
14 Just come up and give us your name. You'll have
15 to be sworn.

16 BRUCE N. KALISER,
17 called as a witness by and-on behalf of Huntington
18 City, being first duly sworn, was examined and
19 testified as follows:

20 MR. CHAIRMAN: Jack, will you get his
21 qualifications?

22 MR. JOHANSEN: We will stipulate to his
23 qualifications to shorten matters.

24 HEARING OFFICER: Yes, that will shorten
25 matters. I'll just get his name and address and by

1 whom he is employed.

2 Q Please give us your name and address
3 and by whom you are employed?

4 A Bruce N. Kaliser, 2951 Nila Way,
5 Salt Lake City. Employed by the State of Utah,
6 Division of Utah Geological and Mineral Survey.

7 Q (By Mr. Feight) You have heard the
8 testimony before the Board this morning and you
9 have some comments to make relative to this and
10 your own experience in the area?

11 A Yes. Briefly, my work consisted of
12 examination of the literature, a field examination
13 of the sites of the three springs; Bear Canyon,
14 Little Bear Canyon, and Birch Spring in this
15 vicinity in question.

16 Examination of the existing mine
17 to which they will enter and expand and the
18 geology in the vicinity of the field. This was
19 done about a month ago at the request of Castle
20 Valley Special Services District.

21 In brief, my conclusion is that it
22 is highly unlikely that the mine plan as presented
23 to me by the Co-op Company would interfere with
24 the quantity or quality of any of those springs,
25 particularly the one in question, the Bear Canyon

1 Spring.

2 Q What do you base this conclusion on?

3 A I base that on the hydrogeologic regime
4 which I believe prevails in the vicinity. The
5 source of the spring is the Star Point Sandstones.
6 There is a very predominant northeast striking
7 joint and fault system that they parallel. The
8 water contributory to this spring exists in my
9 opinion to the north of the mine in the area of
10 the Gentry Mountain. I believe that faults are
11 a guiding, a strong guiding influence to the
12 migratory pattern of groundwater regime in this
13 area. But in entering the mine that Co-op will
14 be going into, it appears that the faults evident
15 in that mine underground are tight, and water is
16 only a distant near the canyon wells. In other
17 words, near the entry, near the portal, not further
18 in. There is no evidence of any water further
19 in.

20 I don't believe that at that locality
21 there is precipitation recharging the aquifer,
22 and so I am of the opinion that the mining operation
23 will not affect the discharge of the spring.

24 Now I do have other data. I've looked
25 at the data. I believe what's been presented here

1 this morning I have not been given copies of what
2 you have. I don't know for a fact that I have
3 seen everything in identical fashion that you have
4 been presented. But it's probably the same data
5 that I have been provided by the improvement
6 district and the mine.

7 Q Mr. Kaliser, if you look at Protestant's
8 Exhibit No. 2, could you kind of draw a fault line
9 for the Board and tell them where you think the
10 faults are to the mining operation, and from what
11 I understand, you are saying that the faults are
12 so tight in the area of the mine that there is no
13 migration of water through the fault system, am
14 I correct?

15 A At the elevation of the mine, the
16 fault gauge is sufficiently tight, and the relief,
17 the runoff that would occur in the vicinity of the
18 mine, I don't believe you would get a contribution
19 at that point. I'm not saying that the faults--
20 quite opposite--I'm not saying that the faults don't
21 influence the groundwater pattern, but I'm saying
22 that there is no evidence from what I see of the
23 faults and in the mine that that is having any
24 influence on the vertical migration of water down
25 to the water table. There is no water table in

1 the mine.

2 Q Is the Star Point Formation which is
3 I understand is the water formation in this
4 area, is above or below the coal seam?

5 A Below the coal seam. The coal seam
6 is in the Blackhawk, so the mine is in the Blackhawk.
7 I do believe there is hydraulic connection there
8 between most of those formations because of that
9 very prominent joint pattern that exists in this
10 part of the plateau. And, of course, this area,
11 this vicinity that we are speaking of is right
12 in the present valley fault zone, so there are
13 individual fault strands. Some of which are
14 identified on existing geologic maps and some
15 of which are in the field. In other words, identified
16 faults not heretofore mapped and some showing
17 presently on maps.

18 Q Approximately how many faults are there
19 in the vicinity of the mine?

20 A In the vicinity of the mine I would say
21 there could be three.

22 MR. BOX: Could you put them on the
23 exhibit?

24 THE WITNESS: This map is sufficiently
25 small in scale. I could, with a little time, but

1 I don't know if you want me to take up that time.

2 This is the larger scale.

3 MR. MCINTYRE: Are they running
4 northeast?

5 THE WITNESS: They are about North 10
6 Degrees East. They are about vertical in attitude.

7 MR. MCINTYRE: And what about
8 displacement?

9 THE WITNESS: Displacement, we've
10 measured in the mine displacements of two and a
11 half feet, four feet two inches and one foot three
12 inches in each case down to the east toward the
13 canyon and the strikes that we measured varied
14 from North 8 East to North 11 East. These were
15 all taken in the mine underground.

16 The greatest fault appears to be at
17 about 600 feet west of the mine portal, the
18 existing mine portal.

19 Now if that fault maintains its strike,
20 it would not strike into the spring and examination
21 of the immediate vicinity of the spring reveals no
22 trace of the fault, interestingly enough. It does
23 show that the water is emerging from joints from
24 this which are parallel to the fault, but I think
25 interestingly enough, no fault is seen within the

1 immediate vicinity of the spring. You can see
2 seepage being emitted from three distinct joints
3 at the spring site. So it's quite an interesting
4 situation.

5 I'm going to sketch on here some of the
6 faults. I can do that, although the scale is such
7 that you can't hold me to it; Birch Spring which
8 is just around the corner, it's actually slightly
9 northwest of Bear Canyon, but it is around the
10 corner, cliffwise, and appears also to be emitted
11 from a shear zone, a zone of closely shaped faults,
12 but not distinct displacement. I can't observe
13 any distinct fault displacements. It's an area
14 that's highly deformed and has created this
15 very prominent joint set, but you don't need
16 displacement to create the channels, the secondary
17 permeability roots.

18 MR. DANIELS: Can you hypothesize
19 that this point produces the actual charge into
20 the spring is from horizontal movement through
21 the joint at or in the Star Point from areas to
22 the north or to the west?

23 THE WITNESS: I think what happens to
24 the north where principally the snow accumulates on
25 Gentry Mountain, there is a recharge that is

1 vertical down to the water table through the
2 Blackhawk, and there is a recharge also from
3 those channels which are from those drainages which
4 are lying along the joint and the fault bed. That
5 vertical migration then reaches the Star Point and
6 travels laterally along shear zones, prominent
7 joints or faults and emerges where the topography
8 dissects the formation. I think all this is happen-
9 ing well below the mine.

10 MR. DANIELS: Essentially what you're
11 saying is the water is dropping down to the next
12 formation below and falling in under the mine?

13 THE WITNESS: Right.

14 MR. McINTYRE: In your opinion is it
15 highly probable that additional activity under-
16 ground in the mine could actually increase the
17 flow of water to the spring in question?

18 THE WITNESS: Depending upon the
19 use of the water in the mine and how they go about
20 mining. It's possible. I think it would have a
21 negligible effect at this site. It might have a
22 greater effect should they go up to the north.

23 MR. DANIELS: Have you got an opinion
24 on subsidence of the mine whether actual subsidence
25 of the roof of the mine would affect the water flow

1 to the spring?

2 A I don't believe that subsidence would
3 have an effect, because I think the runoff over
4 the slopes above the mine--the rule is the greater
5 the slope is -- and it is to the north, and I
6 don't think it would make a difference.

7 There was one or two locations within
8 the mine where there was roof collapse. No water
9 was observed, however.

10 MR. DANIELS: Thank you.

11 MR. CHAIRMAN: Bruce, are you through?

12 THE WITNESS: Yes.

13 MR. CHAIRMAN: We appreciate very much
14 you coming in here. Some of the people may want to
15 ask you a few questions. Do either one of the
16 attorneys want to ask a few questions?

17 MR. JOHANSEN: I have just a few.

18 EXAMINATION

19 BY MR. JOHANSEN:

20 Q Mr. Kaliser, tell us how long it took
21 you to make this study and how indepth the study
22 was?

23 A I was in the field over a period of
24 about a day and a half, and I spent about at
25 least another day and a half in the office to two

1 days something like that. That's a total of three
2 and a half or four days.

3 Q Is that normal for a study of this type?
4 I guess the question is, is this an exhaustive
5 study?

6 A When you talk about hydrology and an
7 exhaustive study, you know you can go further with
8 any study, and that is certainly true of this one
9 as well. You could absolutely ascertain facts
10 by additional drilling and by other sorts of
11 examination.

12 Q You said you relied somewhat on
13 literature. Would you explain what that is?

14 A Yes. The geologic literature that
15 exists for this area and published maps and the
16 geologic literature, the USGS bulletin.

17 Q Did you rely on the flow data that
18 we discussed here today?

19 A The data that was provided me by
20 Darrel, yes. I don't know whether it is exactly
21 what was provided here this morning. I assume it
22 is.

23 Q So you don't know about the source of
24 that data or whether it's reliable or not, is that
25 what you're telling us?

1 A I don't know everything about it,
2 yes. I take it at face value.

3 Q Now when you were inside the mine,
4 is there a tunnel in there that goes in a southerly
5 direction?

6 A In a southerly direction? Predominantly
7 as we enter the mine we are 60 feet north and 100
8 feet northwest and about a hundred feet west north-
9 west and then about 500 feet west.

10 Q That's mostly west?

11 A That was principally our traverse,
12 mostly west.

13 Q You did not go in the tunnel that goes
14 southerly.

15 A There is a north orientation as you
16 enter the portal. In fact, the first 60 feet are
17 almost due north.

18 Q South is what I was talking about.

19 A South of the portal?

20 Q Yes.

21 A Nothing south of the portal.

22 Q Is there any possibility that underground
23 explosions would affect--in assuming the water is
24 where you say it is, would underground explosions
25 have any effect on it?

1 A I would think it would be unlikely.
2 I don't know to what extent explosives have been
3 used in this vicinity in earlier mining efforts,
4 but I do know from hydrologic studies that springs
5 have been there for many many thousands of years
6 because of the breakup of spring deposits. In
7 fact, there is a mound and a ledge of spring
8 deposits. It's very interesting. So it hasn't
9 migrated. The spring has been essentially at this
10 locality for thousands of years. In other words,
11 whatever explosives that they might have used in
12 this vicinity in the past has not influenced the
13 emergence point.

14 Q If there were no explosions in the past
15 or very little, what about the future, that's what
16 we're concerned about?

17 A I don't believe that they would have
18 any effect.

19 Q What is your opinion with regard to
20 possible pollution from the mine of that spring?

21 A I don't believe again that that would
22 be a factor, because if pollution was a possibility
23 then the influence discharge rate would also be
24 equally possible, and for the same reasons that I
25 don't think it would affect the discharge rate, I

1 don't think it will affect the quality of the
2 water.

3 Q If I follow your testimony correctly,
4 in your opinion for this mine to interfere with
5 that spring it would have to go in a northerly
6 direction, is that correct?

7 A They would have to be over a distance
8 to the north on to the recharge area which is
9 something like a mile and a half north of the
10 present mine portal.

11 Q If they did mine that far then there
12 would be a chance that there would be interference
13 with that vertical flow, is that what you are
14 testifying?

15 A Yes.

16 MR. JOHANSEN: I have no further
17 questions, Mr. Chairman.

18 MR. CHAIRMAN: Mr. Kingston, do you
19 have any questions?

20 MR. KINGSTON: I just have a few.

21 EXAMINATION

22 BY MR. KINGSTON:

23 Q According to your studies then, it is
24 your testimony as far as you can tell, the spring
25 in all probability originated from the north, is

1 that correct?

2 A Well, the recharge for the spring
3 is largely derived from areas to the north. I
4 hate to use the word origin as if it were a point
5 source. The stream, the channels as I said are
6 also losing water in my opinion, too, to the
7 aquifers.

8 Q Would this north area be in the
9 approximate area of what is known as the McCadden
10 Hollow?

11 A Yes, and north.

12 Q And farther north of the McCadden
13 Hollow?

14 A Yes.

15 Q That would be in the Gentry Mountain
16 region?

17 A Yes.

18 Q Then it's possible that perhaps a
19 mining operation in that area could affect the
20 spring that we are dealing with today?

21 A Yes.

22 Q Did you look at the mining plans
23 submitted by Co-op Mining?

24 A I examined one which was submitted.
25 Again this is what was submitted.

1 Q Does the plan as it was submitted to you
2 go far enough north in your opinion to affect the
3 flow of the spring?

4 A I don't believe so.

5 MR. KINGSTON: I have nothing further.

6 MR. CHAIRMAN: Thank you.

7 MS. DRAGOO: Could we have that marked
8 as State's Exhibit No. 1, the mining plan that you
9 were testifying from?

10 THE WITNESS: You may. Here it is.

11 (Whereupon State's Exhibit No. 1 was
12 marked for identification.)

13 MR. KINGSTON: I have a couple of
14 comments about that. I don't know how complete that
15 is. Does that show where McCadden Hollow and Gentry
16 Mountain is?

17 THE WITNESS: It's not identified. It
18 does show McCadden Hollow, but it does not show
19 Gentry Mountain.

20 MR. KINGSTON: Would anyone object if
21 we put in where McCadden Hollow and Gentry Mountain
22 Range is?

23 THE WITNESS: It does label Trail Canyon
24 and Bear Creek Canyon.

25 MR. KINGSTON: We have a copy of a plat

1 that I think was taken from the USGS and does give
2 the location of the mine and Gentry Mountain and
3 McCadden Hollow area. We could also submit that.

4 MR. CHAIRMAN: We have no objections.

5 MR. KINGSTON: I'll represent that the
6 exhibit which has been marked as State's Exhibit
7 No. 1 is a copy of the mining plan submitted by
8 Co-op Mining Company to the State.

9 MR. JOHANSEN: We would not object
10 to its admission under that representation.

11 MR. CHAIRMAN: Thank you. State's
12 Exhibit No. 1 will be received in evidence with
13 stipulations.

14 (Whereupon State's Exhibit No. 1 was
15 received in evidence.)

16 Let's proceed with your witness,
17 Mr. Kingston.

18 WENDELL OWEN,
19 called as a witness by and on behalf of Co-op Mining
20 Company, being first duly sworn, was examined and
21 testified as follows:

22 EXAMINATION

23 BY MR. KINGSTON:

24 Q Would you state your name and address
25 for the record, please?

1 A Wendell Owen, Box 300, Huntington,
2 Utah.

3 Q What is your relationship to Co-op
4 Mining Company?

5 A I am employed by Co-op Mining Company
6 in a manager position.

7 Q Are you actively engaged in the day-to-
8 day operations at the mine site?

9 A Yes.

10 Q Are you familiar with the location of
11 the Bear Canyon Mine?

12 A Yes.

13 Q Are you familiar with the Big Bear
14 Spring that we are concerned with today? Is it
15 Big Bear?

16 A Yes.

17 Q Are you familiar with the history of
18 the Bear Canyon Mine itself when it was mined
19 earlier?

20 A I was acquainted with a man who was
21 mining it, a man by the name of Stovell who was
22 mining that mine in the 1940's.

23 Q Do you know the method of mining they
24 used; did they use explosives?

25 A Yes.

1 Q Now with regard to the plan that has
2 been submitted to the State in the Bear Canyon area,
3 is it your intention to mine into the McCadden Hollow
4 area?

5 A No.

6 Q Do you plan on going north a mile or
7 a mile and a half?

8 A From the portal?

9 Q Yes.

10 A The map shows it as a mile. That's the
11 McCadden Hollow area which is about two miles.

12 Q Do you know who owns the McCadden Hollow
13 area?

14 A I think it was on a recent purchase made
15 by Northwest Energy Corporation.

16 Q That's another mining company, isn't
17 it?

18 A Right.

19 Q That isn't your area out there?

20 A That's correct.

21 Q Mr. Kaliser referred to other springs
22 in that particular locale. I believe it was either
23 Birch or Burt Spring.

24 A Birch Spring.

25 Q Do you know where that is located?

1 A Mr. Kaliser indicated that it was around
2 the corner, so to speak, around on the other side
3 of the ledge. That places it south from our
4 Trail Canyon operation in a similar position to
5 where the Bear Spring is from the Bear Canyon
6 operation.

7 Q How long have you been mining at the
8 Trail Canyon site?

9 A The company has been mining there for
10 around 40 years.

11 Q Have you used explosives in the mine
12 operation there?

13 A Yes.

14 Q During that 40 year period of time
15 has the mining operation had any effect at all on
16 the Birch Spring?

17 A Not to my knowledge.

18 Q Now the mining operation at the Bear
19 Canyon site, have you gone through the mined area?

20 A Yes.

21 Q You are familiar where the faults are?

22 A Yes.

23 Q Within the mine?

24 A Yes.

25 Q Did the previous miners pass through a

1 fault, a major fault there?

2 A Yes.

3 Q Did they encounter water, do you know?

4 A There is no evidence of it.

5 Q As far as encountering water in a
6 mined area, is that usual or unusual?

7 A Very common.

8 Q In large amounts or small amounts?

9 A It depends on what you call large
10 and small amounts. In all our mining experience
11 there is infiltration that varies with the outside
12 weather conditions. We are, in fact, dependent
13 upon that for dust control in the mine. We make a
14 practice of making what we call a sump hole to
15 accumulate that at the time. It's kind of dripping
16 from the roof at various places. We try to accum-
17 ulate it in a sump hole and then later pump it.

18 Q Then it would be fair to say that you
19 have encountered water in the mine where you are
20 at now?

21 A In that form, yes.

22 Q And yet your testimony was that the
23 mining operation has not affected Birch Spring which
24 is a location similar to what Big Bear Spring would
25 be to Bear Canyon mine?

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A That's right.

MR. KINGSTON: I've got some exhibits that Mr. Owen supplied to me. Do you have copies of these exhibits? Why don't you take the one which is the flow rates of Huntington Bear Canyon and look at that if you will, please.

Let's have this marked as Co-op Mining Exhibit No. 1.

(Whereupon Co-op Mining Company's Exhibit No. 1 was marked for identification.)

Q (By Mr. Kingston) Was this exhibit prepared by you, Mr. Owen?

A Yes.

Q Where did you get that information?

A From Arlo Richardson, the State Climatologist at Logan, Utah.

HEARING OFFICER: Did you get the information for this exhibit or the exhibit itself?

THE WITNESS: I got the information for the exhibit.

HEARING OFFICER: Was the exhibit prepared by you?

THE WITNESS: Yes, that's correct.

MR. KINGSTON: I would offer that for what it might be worth, Mr. Chairman, as representing

1 the figures that they took from the flow meter during
2 the year 1978 on the Big Bear Canyon Spring.

3 MR. CHAIRMAN: We will accept that on
4 the same basis, for its probative nature.

5 (Whereupon Co-op Exhibit No. 1 was
6 received in evidence.)

7 Q (By Mr. Kingston) We were talking
8 about the flow rate. Where did the flow rate come
9 from?

10 A It came from Terry Danielson of the USGS.

11 Q That's the one that lists the flow
12 rates from the dates of April '78 to December of '78?

13 A Yes, sir, that's correct.

14 Q Do you have any information on the pre-
15 cipitation during the water year that preceded
16 those regulations?

17 A Yes.

18 Q Where did you get that information?

19 A That was the information that came from
20 the State Climatologist, Arlo Richardson.

21 Q What was the precipitation during the
22 year 1977 and 1978 expressed as an average?

23 A 149 percent of normal.

24 Q This is '77 and '78.

25 A '77 and '78 was 109 percent of normal.

1 Q Do you have any information on what
2 the precipitation was for the water year 1979 and
3 1980?

4 A That was 149 percent of normal.

5 MR. KINGSTON: I also have another
6 exhibit. I don't believe we would necessarily want
7 it in the record unless the members of the Board
8 want it in. It is simply a recap of the water
9 used from 1971 to 1980. I believe the only informa-
10 tion we have is on '77 and '78 and 1980 of the
11 flow from the spring. We have other information
12 available if the Board members are interested.

13 MR. CHAIRMAN: I think not.

14 Q (By Mr. Kingston) In light of Mr.
15 Kaliser's testimony, I don't believe it would do
16 any good to question Mr. Owen on the other hydrologic
17 regime aspects. So I don't have any further
18 questions for him.

19 MR. CHAIRMAN: Are you going to make
20 this an exhibit?

21 MR. KINGSTON: Yes, we should offer
22 this as an exhibit. It merely defines the forma-
23 tion in that area. I believe we have got sufficient
24 copies. We can give everyone here a copy. It shows
25 the mined area along with the McCadden Hollow and the

1 Gentry Mountain.

2 MR. CHAIRMAN: Should we identify that
3 as Exhibit 2?

4 MR. KINGSTON: That will be fine.

5 (Whereupon Co-op Mining Exhibit No. 2
6 was marked for identification.)

7 MS. DRAGOO: Did Mr. Owen prepare this
8 exhibit?

9 MR. KINGSTON: I believe Mr. Owen drew
10 in what is in red. The rest is a copy of the
11 USGS map.

12 MR. JOHANSEN: For the record, could
13 he identify the red line and the blue dot?

14 THE WITNESS: That was my interpreta-
15 tion of approximately where the spring is. The
16 red is our lease area. The one side that I have
17 drawn lines through is the side that has already
18 been mined out. The other part is the permit
19 area that we are requesting.

20 MR. KINGSTON: For my clarification, the
21 area that has the red lines is where the Trail
22 Canyon Mine is?

23 THE WITNESS: Yes.

24 MR. JOHANSEN: Mr. Owen, is there a
25 tunnel in a southerly direction, in the leasehold

1 mine?

2 A There are some entries going into that
3 direction.

4 Q (By Mr. Johansen) Are you going to be
5 developing in that direction?

6 A No. They went as far as they could
7 in that direction. If you look at the mine plan
8 you will see that south is from the portal and
9 goes right directly to the surface. I think
10 Mr. Kaliser mentioned that the only place they
11 encountered water is near the surface.

12 Q With regard to your Exhibit No. 1, the
13 flow rates from the Big Bear Spring, were those
14 flow rates taken from the meters that we've already
15 discussed today?

16 A I only know that these rates were given
17 to me by this Terry Danielson of USGS that he said
18 he took. I can't answer that.

19 MR. JOHANSEN: I don't have any further
20 questions.

21 MR. CHAIRMAN: Let me ask a question.
22 This spring, that third spring, that you referred to,
23 what was the name of it?

24 THE WITNESS: The spring that I show,
25 that's my idea of where the Bear Canyon Spring is.

1 mine?

2 A There are some entries going into that
3 direction.

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18 he took. I can't answer that.

19 MR. JOHANSEN: I don't have any further
20 questions.

21 MR. CHAIRMAN: Let me ask a question.
22 This spring, that third spring, that you referred to,
23 what was the name of it?

24 THE WITNESS: The spring that I show,
25 that's my idea of where the Bear Canyon Spring is.

1 This spring I didn't show. That's called the Birch
2 Spring.

3 MR. CHAIRMAN: All right. Are there any
4 further questions of Mr. Owen?

5 MR. KINGSTON: No, we have nothing
6 further.

7 MR. JOHANSEN: We have nothing.

8 MR. CHAIRMAN: Now are there any more
9 witnesses?

10 MR. JOHANSEN: No, Mr. Chairman.
11 We have nothing further.

12 MR. CHAIRMAN: Would you like to make a
13 closing statement?

14 MR. KINGSTON: Just very briefly. It's
15 my understanding that we aren't concerned with the
16 protest lodged by the County. It's simply with the
17 protest from Huntington City?

18 MR. CHAIRMAN: We are concerned, but
19 it's not within our jurisdiction.

20 MR. KINGSTON: All right. With regard
21 to the protest filed by Huntington City and the
22 Conservancy District, again, I want to reiterate
23 our position that if we do encounter water and if
24 the water that we encounter somehow causes a
25 diminution of the flow from the spring, we are

1 willing to do that. I think the testimony has
2 been clear that the likelihood of our mining
3 operation affecting this spring is very, very
4 remote. Based upon that, the agreement proposed
5 by Huntington City, I believe would be overly
6 burdensome. Again, the primary requirement that
7 we can't accept in that agreement, is that in the
8 event the spring diminishes in flow for any reason,
9 we have the responsibility for making up the water
10 by buying water shares, or in some other manner
11 guaranteeing they have a constant source of supply.

12 Now even a guarantee of a source of
13 supply of say 150 gallons per minute would be
14 burdensome because we don't know because of the
15 lack of diligence, at least the lack of records
16 that they have kept on that spring, we don't know
17 what it was in '76 after the drought year when
18 the precipitation factor was 35 percent of normal.
19 We don't know if it got down below 100 or not.
20 The figures that the USGS have been able to obtain
21 from that spring in 1978 when the precipitation
22 was 109 percent of normal it went down as low as
23 110 gallons per minute.

24 Again, this also as the State Attorney
25 General's office mentioned at the beginning of this

1 case, may not be within the jurisdiction of this
2 Board. We admit we ought to be concerned with the
3 water, hydrological and the effect of the mining
4 operation and other problems. If we do interfere
5 with that spring flow or if the City feels like we
6 are going to interfere with that spring flow; a water
7 right is a valuable property right and they have a
8 right to go into court and protect that right. The
9 fact that you allow us to go in and mine without
10 entering into an agreement would have no effect
11 on their right to go into court and sue us if
12 they feel like we are interfering with their valuable
13 property right, and we would expect that they would
14 do that. But to require us when the likelihood
15 that we are going to cause a problem is so minute
16 to enter into an agreement that we are going to
17 guarantee that they will have a constant flow of
18 water I think is burdensome, unreasonable and really
19 unjust. I don't think that the Board has the juris-
20 diction to make that requirement based on the
21 evidence that has been submitted today. Thank you.

22 MR. JOHANSEN: Very briefly it is our
23 position that first of all the agreement which has
24 been submitted is a position statement and is not
25 cast in concrete and can be altered by negotiation.

1 Secondly, it is our position that this Board clearly
2 has jurisdiction over this issue according to the
3 sections that I quoted to you in the beginning.

4 Thirdly, it is not our position that
5 this Board should concern itself with arbitrating
6 between these two parties, and we are not asking
7 you to spend your time to do that. I think that
8 would be burdensome to you and the Division and
9 the Board ought not to get into that. What we are
10 asking you to do is to cooperate with us and
11 recognize that the City's water system is a valuable
12 right which cannot be tampered with and must be
13 protected. If we can do that, if we can get the
14 Board and the Division to exercise what I think is
15 their clear jurisdiction to protect that water
16 right, that is all we are asking for and then the
17 City and the Co-op can get together and negotiate
18 the terms of that agreement. We will take the
19 position that an agreement is absolutely necessary
20 to allow the development in that area.

21 We would also take the position that
22 under Section 40-8-22 and 40-8-17 this Board clearly
23 has the jurisdiction to cooperate with the County
24 on that issue of allowing the County to be involved
25 in cooperating between the two and the granting of

1 applications to mine in that area.

2 That's all I have at this time other
3 than to reemphasize that it is not our position
4 to be burdensome or unreasonable. We are in
5 favor of coal development in that area. We want
6 to get it developed **in a proper** fashion, but
7 also an orderly fashion. We will do what we can
8 to cooperate. The townspeople down there are
9 only trying to protect their water supply. They
10 are not trying to be unreasonable. If we can get
11 cooperation from all parties concerned, then I
12 think we can resolve this matter.

13 MR. CHAIRMAN: Thank you very much,
14 gentlemen. We will take it under advisement and
15 you will be advised.

16 (Whereupon the hearing concluded.)
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C E R T I F I C A T E

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

I, ATHENA MOORE, do hereby certify that
I am a Certified Shorthand Reporter and Notary
Public in and for the State of Utah; that as such
reporter I attended the above-entitled matter and
thereat reported in Stenotype all the testimony,
evidence and proceedings had therein; that thereafter
I caused to be transcribed my said stenographic notes
into typewriting, and the foregoing constitutes a
full, true and correct transcription of the same,
to the best of my ability.

DATED at Salt Lake City, Utah, this
26th day of June, 1980.

Athena Moore
ATHENA MOORE
Certified Shorthand Reporter

My Commission Expires:

7/1/81